

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

10 Emanuel L Finch Sr,

11 Plaintiff,

12 v.

13 Keith Miller et al.,

14 Defendants.

CASE NO. C17-5293 RBL-DWC

ORDER TO SHOW CAUSE

15  
16 Plaintiff Emanuel L. Finch, Sr., proceeding *pro se*, filed a Complaint pursuant to 42  
17 U.S.C. §1983. *See* Dkt. 1-1. Having reviewed the Complaint, the Court declines to serve the  
18 Complaint as Plaintiff is challenging the fact and duration of his confinement, not his conditions  
19 of confinement. The Court, however, provides Plaintiff leave to file a habeas corpus petition by  
20 June 5, 2017 to cure the deficiencies identified herein.

21 **BACKGROUND**

22 Plaintiff, who is currently incarcerated at the Airway Heights Corrections Center  
23 (“AHCC”) and alleges Defendants violated Plaintiff’s Fourth and Sixth Amendment rights when  
24 he was arrested in 2010 and convicted in 2011. Dkt. 1-1. Plaintiff requests the Court overturn his

1 conviction on the grounds Plaintiff was deprived of effective assistance of counsel and  
2 Defendant Miller entered into Plaintiff's home without probable cause or a warrant. Dkt. 1-1 at  
3 20.

## 4 DISCUSSION

5 An "action lying at the core of habeas corpus is one that goes directly to the  
6 constitutionality of the prisoner's physical confinement itself and seeks either immediate release  
7 from that confinement or the shortening of its duration. With regard to such actions, habeas  
8 corpus is now considered the prisoner's exclusive remedy." *Preiser v. Rodriguez*, 411 U.S. 475,  
9 503 (1973) (internal quotation omitted). "A civil rights action, in contrast, is the proper method  
10 of challenging conditions of confinement." *Badea v. Cox*, 931 F.3d 573, 574 (9th Cir. 1991).  
11 Here, Plaintiff challenges his physical confinement, asking the Court to "overturn" his  
12 conviction. Dkt. 1-1. As Plaintiff's claims challenge the fact and duration of his custody, his  
13 claims are properly raised in a 28 U.S.C. § 2254 petition.

14 If Plaintiff intends to pursue the claims alleged in his Complaint, he must file a habeas  
15 corpus petition on the form provided by the Court, including only claims challenging the fact or  
16 duration of his custody. Under Rule 2(a) of the Rules Governing Section 2254 Cases, "the  
17 petition must name as respondent the state officer who as custody." Further,

18 [t]he petition must: (1) specify all the grounds for relief available  
19 to the petitioner; (2) state the facts supporting each ground; (3)  
20 state the relief requested; (4) be printed, typewritten, or legibly  
21 handwritten; and (5) be signed under penalty of perjury by the  
22 petitioner or person authorized to sign it for the petitioner under 28  
23 U.S.C. §2242.

24 *Id.* at Rule 2(c). The Petition must "substantially follow" a form prescribed by this Court or the  
form attached to the Rules Governing Section 2254 Cases. *Id.* at Rule 2(d). The petition should  
be an original and not a copy, it should contain the same case number, and it may not incorporate

1 any part of the Complaint by reference. The petition will act as a complete substitute for the  
2 Complaint, and not as a supplement. If Plaintiff fails to adequately address the issues raised  
3 herein and file a petition on or before June 5, 2017, the undersigned may recommend dismissal  
4 of this action.

5 Plaintiff also filed a Motion for Leave to File Overlength Memorandum in Support of his  
6 Complaint. Dkt. 1-2. Plaintiff's Proposed Memorandum is over 200 pages in length. Plaintiff has  
7 presented nothing to show the request should be granted, and has not shown this case is  
8 unusually complicated or presents novel issues to justify the request. Thus, Plaintiff's Motion is  
9 denied. If Plaintiff wishes to pursue this cause of action, he must file an amended pleading which  
10 complies with the Local Rules.

11 The Clerk is directed to: (1) provide Plaintiff with the forms for filing a petition for  
12 habeas corpus relief pursuant to 28 U.S.C. § 2254; (2) re-note Plaintiff's Motion to Proceed *In*  
13 *Forma Pauperis* for June 5, 2017; and (3) provide copies of this Order to Plaintiff.

14 Dated this 4th day of May, 2017.

15   
16 \_\_\_\_\_

17 David W. Christel  
18 United States Magistrate Judge  
19  
20  
21  
22  
23  
24